

In re: Kenneth Lee Harper
Serial No. 09/641,045
Filed: August 17, 2000
Page 2 of 5

REMARKS

Applicant appreciates the thorough examination of the present application as evidenced by the Final Action. Applicant submits that the present rejections should be withdrawn for the reasons discussed below. As the rejections in the Final Action appear to track those in the previous Office Action, Applicant will not repeat the arguments from Applicant's previous Amendment herein so as to expedite the Examiner's reconsideration of the rejections. However, while only the Response to Arguments section of the Final Action will be addressed below, Applicant's previous Amendment is incorporated herein by reference in its entirety.

Paragraph 1 of the Final Action asserts that "all packets are directed to a destination, so the reference necessarily determines a point of loss between a source and a destination." Final Action, p. 2. This statement indicates a lack of appreciation for Applicant's corresponding argument or the scope of Claim 1. In particular, Claim 1 recites:

A method for determining a point of loss for data records to be communicated between a source and a destination on a communication network, the method comprising the steps of:

determining a topology of the communication network between the source and the destination, the topology including a plurality of connecting nodes;

monitoring a number of data records from the source directed to the destination passing between ones of the connecting nodes during a determined period of time; and

identifying at least one of the connecting nodes as the point of loss based on the monitored number of data records and the determined topology.

As is clear from the highlighted portions of Claim 1, monitoring in Claim 1 is of packets from a specific source to a specific destination. Thus, merely because the packets monitored in Dawson are directed to a source does not mean Dawson teaches the monitoring recitations of Claim 1. In other words, while Dawson may monitor packets from a particular source to generate a source address loss metric, this metric is based on packets from the source to any and all destinations, not to a specific destination.

The Examiner's interpretation of Claim 1 is clearly unduly broad if this distinction is being given no consideration given the other highlighted portions of Claim 1 above. For

In re: Kenneth Lee Harper
Serial No. 09/641,045
Filed: August 17, 2000
Page 3 of 5

example, determining a "topology" of a network between a particular source and destination makes no sense in the ring context of Dawson as all sources to all destinations extend around a common ring. More particularly, determining a point of loss based on such topology and monitored data records between a particular source and a particular destination makes no sense in the context of the ring of Dawson. Thus, Applicant submits that merely stating that the packets of Dawson are "directed to a destination" does not disclose the monitoring of data records from a particular source to a particular destination as recited in independent Claim 1. Independent Claims 16, 20 and 35 contain corresponding recitations.

Paragraph 3 of the Final Action also misses the point of Applicant's corresponding argument at page 19 of the previous Amendment. In particular, Applicant pointed out that, given the ring architecture of Dawson, there was simply no impetus to modify Dawson to arrive at the recitations of Claim 1 related to monitoring data records from a particular source to a particular destination.

Paragraph 4 of the Final Action asserts that for the ring network of Dawson, "the point of loss is known in part because of the determined topology of the network." Applicant understands the portions of Dawson relied on for the corresponding rejection to be describing a loss calculation at a particular node of good packets entering and exiting a port logic block of the particular repeater node. Applicant submits such a loss calculation is not even "in part" based on the topology of the ring network.

Paragraph 5 of the Final Action is based in part on the same response discussed above with reference to the preceding paragraphs. In addition, Applicant is unable to find in Dawson any disclosure as asserted by the Final Action of "calculation of a loss metric for ... a target address." Final Action, p. 3. Finally, while a memory may be "inherent" in a node of Dawson, there is simply no basis for asserting that the memory includes "a topology of the communication network between the source and the destination" as recited in Claim 16 simply because "the port logic knows the status of a packet entering and exiting and the source and destination of the packet" as asserted in the Final Action.

Paragraph 6 of the Final Action asserts that the "incoming packet is the first hop and the outgoing is the next." Applicant submits that such an interpretation is inconsistent with the present application's association of hops with transfers between distinct connecting nodes.

In re: Kenneth Lee Harper
Serial No. 09/641,045
Filed: August 17, 2000
Page 4 of 5

See, e.g., Specification, p. 17, lines 21-30. The ports of Dawson discussed in the Final Action are simply into and out of a single node on the ring and cannot properly be considered first and next hops of Claim 3.

With respect to the comments in Paragraph 7 of the Final Action, Applicant notes that the Examiner is overlooking recitations of the claims in responding by limiting the reliance on Faigon, essentially, the teaching of using threshold values to identify a point of loss. The actual recitation of the claim, which is not taught or suggested by any of the cited references, is detailed in the corresponding argument section at page 21, paragraph 3 to page 22, paragraph 1 of the previous Amendment.

With respect to the comments in Paragraph 8 of the Final Action, Applicant notes that the corresponding arguments do not depend on whether the claim recites "not a ring network" but instead relate to the failure of the cited references to disclose or suggest the detailed recitations of Claims 5-6, 24-25 and 39-40 related to calculations to determine a point of loss. Applicant respectfully submits that a *prima facia* basis for a rejection cannot be established by simply pointing out words that do not appear in the claim, the cited references must be shown to disclose all the recitations of the claims and to be properly combined to arrive at the combination of recitations found in the claims. The reference to the ring of Dawson in those arguments, again, is simply to point out that, in such a context, there is clearly no motivation to modify Dawson to arrive at the present invention as recited in the respective claims.

The comments in Paragraph 9 of the Final Action are nothing more than speculation that there "may be changes introduced" and conclusory assertions that these "changes would be compensated for by the system." Final Action, p. 4. Applicant submits that there is no basis for this assertion that such hypothetical changes "would be compensated for" nonetheless how or where Dawson teaches such compensation. Finally, the comments in Paragraphs 10 and 11 of the Final Action appear, like those in Paragraph 7, to fail to consider the recitations of the respective claims in their entirety and further fail to address the various problems with the alleged combinations discussed in the corresponding arguments of Applicant's previous Amendment.

In re: Kenneth Lee Harper
Serial No. 09/641,045
Filed: August 17, 2000
Page 5 of 5

Conclusion

Applicant respectfully submits that, for the reasons discussed above and in Applicant's previous Amendment, the references cited in the present rejections do not disclose or suggest the present invention as claimed. Accordingly, Applicant respectfully requests allowance of all the pending claims and passing this application to issue.

Respectfully submitted,



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